

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7518

Petition of Vermont Community Wind Farm LLC)
for a certificate of public good authorizing the)
installation and operation of a temporary wind)
measurement tower and associated equipment on)
Herrick Mountain in the Town of Ira, Vermont)

Order entered: 1/6/2010

ORDER RE CHANGE IN LOCATION OF WIND MEASUREMENT TOWER

I. INTRODUCTION

On October 23, 2009, Vermont Community Wind Farm LLC ("Vermont Community Wind") filed a letter with the Public Service Board ("Board") indicating that it had changed the location for the wind measurement tower on Herrick Mountain by approximately 46 feet from the location approved in its Certificate of Public Good ("CPG").

In this Order, we conclude that the change in location of the wind measurement tower by Vermont Community Wind does not represent a material deviation of the project as approved, and thus does not require prior approval by the Board.

II. PROCEDURAL HISTORY

On August 28, 2009, the Board issued a CPG to Vermont Community Wind authorizing the installation and operation of a temporary wind measurement tower and associated equipment on Herrick Mountain in the Town of Ira, Vermont. Condition 1 of Vermont Community Wind's CPG requires that "[c]onstruction, operation, and maintenance of the project shall be in accordance with the plans and evidence submitted in this proceeding. Any material deviation from these plans must be approved by the Board."

On October 23, 2009, Vermont Community Wind filed a letter with the Board indicating that it had changed the location for the wind measurement tower installed on Herrick Mountain. Vermont Community Wind states that the final location of the wind measurement tower on Herrick Mountain is estimated to be about 46 feet east of the approximate location identified in its petition. Vermont Community Wind contends that all other conditions at this site are essentially unchanged from the petition: (1) the tower height remains at 60 meters; (2) the overall elevation to the tip of the tower is marginally lower; (3) the required tree clearing overlaps with the location in the petition (with a slight shift in orientation); (4) the location of the tower and clearing remains within the leased property; (5) the access route is the same; and (6) the location has no impacts on, and is no closer to, identified environmental resources based upon the prior environmental assessment.

On October 23, 2009, the Board established a deadline of November 6, 2009, for any responses to Vermont Community Wind's October 23 filing.

On November 6, 2009, the Department of Public Service ("Department") filed a letter concluding that the siting of the wind measurement tower 46 feet away from the location indicated in the petition is not a material deviation requiring prior Board approval. In addition, the Department states that there is a very limited likelihood that a move of this magnitude would alter the findings pursuant to Section 248(b).

On November 6, 2009, Vermonters for a Clean Environment ("VCE") filed a letter requesting that the Board hold a site visit and public hearing so that the public can comment on how the change is relevant to the substantive criteria of Section 248, or require Vermont Community Wind to remove the wind measurement tower and apply for a new CPG.

On December 14, 2009, Vermont Community Wind filed a response to VCE. Vermont Community Wind states that the change in location of the wind measurement tower does not represent a material deviation from its approved plans. Vermont Community Wind contends that the as-built location does not have the potential to raise significant impacts under the Section 248 criteria and that a site visit and public hearing are not necessary.

The Board received no other responses from parties or interested persons.

III. DISCUSSION AND CONCLUSIONS

Condition 1 of Vermont Community Wind's CPG requires that "[c]onstruction, operation, and maintenance of the project shall be in accordance with the plans and evidence submitted in this proceeding. Any material deviation from these plans must be approved by the Board."

In previous Board decisions, we have determined that a project's changes were "substantial" when they were "potentially significant" under the Section 248 criteria.¹ We further held that, while it was possible that the revised project would satisfy the standards of Section 248, and perhaps would satisfy them more easily than the original design, the statute requires the Board to find that the standards are met. We thus required petitioners to file an application for an amended CPG for the revised design to determine whether the changes actually comply with the Section 248 criteria.

We conclude that a similar analysis applies in determining whether Vermont Community Wind's relocation of the wind measurement tower represents a material deviation. A fundamental purpose of Section 248 is to protect the values and resources that are reflected in the Section 248 criteria. Thus, it is reasonable to conclude that a deviation is material, for purposes of Section 248, if it has the potential for significant impacts under the Section 248 criteria.

We conclude that the movement of the wind measurement tower by 46 feet does not constitute a material deviation from the plans approved in the CPG. The new location does not represent a change in tower height, a change in elevation on Herrick Mountain, or a significant change in tree clearing. The change in location does not have the potential for significant impacts to the Section 248(b) criteria, including aesthetic and environmental criteria, and therefore does not rise to the level of material deviation requiring Board approval. The original petition provides information to assess the impacts for the as-built location. Therefore, we do not require that Vermont Community Wind file for an amendment to its CPG to seek approval for the wind measurement tower to remain in its as-built location.

1. *Vicon Recovery Systems*, Docket No. 4813-A, Procedural Order of 3/23/87 at 3-4, incorporated into Final Order of 12/16/87 at 2, 53; *Investigation into Citizens Utilities Company*, Docket 5841/5859, Order of 6/16/97, at 131- 133; *Petitions of Vermont Electric Power Company and Green Mountain Power Corporation*, Docket 6860, Order of 11/30/07 at 3.

VCE requested that the Board hold a site visit and public hearing so that the public can comment on how the change is relevant to the substantive criteria of Section 248. The Board provided opportunity for parties and interested persons to comment on the change in location of the wind measurement tower. Besides the Department and VCE, the Board received no responses to Vermont Community Wind's October 23 filing. Given our conclusion that the change in location does not constitute a material deviation from the approved plan in the CPG, we conclude that a site visit and public hearing are not necessary.

SO ORDERED.

Dated at Montpelier, Vermont, this 6th day of January, 2010.

<u>s/ James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/ David C. Coen</u>)	
)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: January 6, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.